# In the Supreme Court of the United States

OCTOBER TERM, 1966

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No. 1134

THE UNITED GAS IMPROVEMENT COMPANY, PETITIONER

*v.*

SUNRAY DX OIL COMPANY, ET AL.

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No. 1135

THE BROOKLYN UNION GAS COMPANY, ET AL.,
PETITIONER

*v.*

FEDERAL POWER COMMISSION

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*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

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**MEMORANDUM FOR THE FEDERAL POWER COMMISSION**

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In the administrative proceeding out of which these cases arise, the Federal Power Commission issued a number of certificates of public convenience and necessity authorizing the sale of natural gas from fields in the Texas Gulf Coast area. In its decision, the Commission (1) determined that the maximum price at which the gas could be sold pending the determination of just and reasonable rates was 16 cents per



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Mcf, and (2) reserved for later decision the question whether the producers should be ordered to refund certain excessive charges which they had collected during a period of temporary authorization. On judicial review, the Court of Appeals for the Tenth Circuit upheld the issuance of the certificates at the 16 cent price, but reversed the Commission on the refund question, holding that the Commission was without power to order refunds because it had failed to expressly warn the producers of such a liability in issuing the temporary certificates. Our petition for a writ of certiorari to review the latter aspect of the court's judgment is before this Court in *Federal Power Commission* v. *Sunray DX Oil Co.*, No. 1133, this Term.

By the instant petitions, consumer interests affected by the sales in question seek review not only of the refund issue but also of the propriety of the 16 cent in-line price, which they contend is too high. For the following reasons, we agree that an unrestricted grant of certiorari, which would bring both issues before this Court, would be appropriate.

1. The decision below upholding the in-line price of 16 cents per Mcf is inconsistent with a recent decision of the Court of Appeals for the District of Columbia Circuit. *Public Service Commission of New York* v. *Federal Power Commission*, Nos. 19796 *et seq.*, decided February 7, 1967 (reprinted in Pet. No. 1135, App. C). That case holds that the Commission, in establishing an in-line price, may not consider any prices other than those for comparable sales which have been permanently certificated by the Commission

and either upheld on judicial review or not challenged. This approach, which in the Commission's view improperly freezes the price line at the level the consumer interests are willing to accept, led the District of Columbia Circuit to invalidate a 16 cent in-line price in certificates also involving the Texas Gulf Coast area—the very price upheld by the court below. See, also, *Pan American Petroleum Corp.* v. *Federal Power Commission,* C.A. 10, Case Nos. 7912 *et seq.,* decided March 9, 1967.

2. The issue is undoubtedly one of substantial importance. Although the area-rate approach which the Commission has adopted may eventually obviate the necessity of establishing in-line prices by the criteria here employed, no area rate has yet been finally approved; at best, several years must elapse before the new technique is fully implemented. In the interim, the question at bar of the proper standards for in-line prices will continue to arise.

Respectfully submitted.

THURGOOD MARSHALL,
*Solicitor General.*

RICHARD A. SOLOMON,
*General Counsel,*
*Federal Power Commission.*

APRIL 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967